

REMARKS

This submission is in response to the Official Action dated December 16, 2002. Claims 1-13 are pending. Reconsideration of the above identified application, in view of the following remarks, is respectfully requested.

First, Applicant would like to draw the Examiner's attention to some clerical errors in the Preliminary Amendment filed June 25, 2001. During the International Phase of PCT application PCT/NL99/00806, the PCT application from which the instant U.S. National phase application derives, claims 2, 4, and 5 were amended to recite as follows in an Amendment filed November 29, 2000:

2. Phagocyte-recognizing agent, characterized in that the phagocyte-recognizing agent recognizes the antigen that is recognized by at least one bacteriophage as can be isolated from the strains having accession numbers CBS 101481 and 101482.

4. Pharmaceutical composition comprising a phagocyte-recognizing agent capable of recognizing the antigen that is recognized by at least one bacteriophage as can be isolated from the strains having accession numbers CBS 101481 and 101482 together with a pharmaceutically acceptable excipient or carrier.

5. Method of detecting a preactivated phagocyte, characterized in that a phagocyte-recognizing agent capable of recognizing the antigen that is recognized by at least one bacteriophage as can be isolated from the strains having accession numbers CBS 101481 and 101482 is contacted with a phagocyte, and a complex formed between the phagocyte-recognizing agent and the phagocyte is detected.

The Preliminary Amendment filed 6/25/01 amended, *e.g.*, the phrase "characterized in that ..." to "wherein ...". The Preliminary Amendment did not, however, take into consideration that, during the International Phase, (1) claim 2 had been amended to recite antigen instead of agent in the phrase "the phagocyte-recognizing agent recognizes the agent ...", or that (2) the phrase "... capable of recognizing the antigen that is recognized by at least one bacteriophage as can be isolated from the strains having accession numbers CBS 101481 and 101482..." had already been added to claim 4 and 5, since this phrase was marked-up as newly added text.

To clarify the wording of the pending claims, an Examiner's Courtesy Copy of the pending claims, including amendments made during International and U.S. National Phase, and indicating the number of times each claim has been amended during U.S. National Phase, is submitted herewith. Applicant's Representative apologizes for the above-mentioned clerical errors and any confusion they may have caused.

Restriction Requirement

In the Office Action, the Examiner required election of one of the following groups of claims:

- I. Claim 1, drawn to an antigen of a phagocyte;

II. Claims 2-4, drawn to a phagocyte-recognizing agent and a pharmaceutical composition; and

III. Claims 5-13, drawn to a method of detecting a preactivated phagocyte.

The Examiner asserts that the claims of Groups I-III are not so linked by the same or corresponding special technical feature as to form a single inventive concept and so, allegedly, lack unity of invention, citing PCT Rule 13.1.

In order to be fully responsive, Applicants hereby elect claim group II, corresponding to claims 2-4. This election is, however, made with traverse. For the reasons outlined below, it is respectfully submitted that all claim groups, or, at the very least, claim groups II and III, should be rejoined.

• **The International Preliminary Examination Report Found No Lack of Unity**

The international phase application from which the present application claims priority contained essentially the same claims as in the present application. No lack of unity objection was raised in the International Preliminary Examination Report for this international application. Accordingly, the Authorized Officer of the International Preliminary Examination Report viewed the present claims as having a single general inventive concept.

The same requirements for lack of unity apply in the international phase as in the national phase. See 37 C.F.R. §§ 1.475 and 1.499; and MPEP 1893.03(d). Therefore, the present election requirement is contradictory to the International Preliminary Examination Report.

- **Claim Groups I-III Are All Characterized By The Same Special Technical Feature**

The Examiner contends that claim groups I-III are characterized by different special technical features, reciting that the technical features of the respective groups I-III are an antigen of a phagocyte, a phagocyte recognizing agent, and a method of detecting a preactivated phagocyte.

It is respectfully submitted that this is in err. A group of inventions is considered linked to form a single general inventive concept where there is a technical relationship among the inventions that involves at least one common or corresponding special technical feature. See MPEP 1893.03(d). The term "special technical features" is defined as meaning those technical features that define a contribution which each of the inventions considered as a whole, makes over the prior art. See 37 C.F.R. §1.475(a).

The present invention contributes an antigen recognized by at least one bacteriophage as can be isolated from strains CBS 101481 or 101482. This particular antigen is a special technical feature common to all claim groups and

recited in all pending claims. Therefore, each and every claim group designated by the Examiner contains a common technical feature.

This is even more evident for claim groups II and III, which both relate to a particular embodiment of this special technical feature; a phagocyte-recognizing agent capable of recognizing an antigen recognized by at least one bacteriophage as can be isolated from strains CBS 101481 or 101482.

• The Method of Claim Group III Utilizes the Phagocyte-Recognizing Agent of Claim Group II

As discussed above, the special technical feature of claim groups II and III is the same, *i.e.*, the phagocyte-recognizing agent. The use of the phagocyte-recognizing agent is a key feature of the method of claim Group III, which involves contacting the phagocyte-recognizing agent (*i.e.*, the special technical feature common to claims groups II and III) with a phagocyte. The Code of Federal Regulations recites as follows (37 C.F.R. 1.475(b), emphasis added):

(b) An international or a national stage application containing claims to different categories of invention will be considered to have unity of invention if the claims are drawn only to one of the following combinations of categories:

...

(2) A product and process of use of said product; or

Accordingly, there can be no question that claim groups II and III comply with the unity of invention requirements as set forth by PCT Rule 13.1 and

37 C.F.R. §1.475. It is therefore respectfully submitted that the restriction requirement is unwarranted, and withdrawal of the restriction requirement, at the very least as applied to claim groups II and III, is earnestly requested.

Election Requirement

The Examiner issued a species election requirement if claim group III were to be elected. To advance prosecution in case the Examiner decides to rejoin claim group III with elected claim group II, Applicants hereby constructively elect GFP as the Fluorescent Protein and organ-bound inflammatory diseases as patient condition. Claims 5, 6, and 8 read upon the elected fluorescent protein species, and claim 5 read upon the elected patient condition species.

It is noted that, upon allowance of a generic claim, Applicant is entitled to consideration of claims to additional, non-elected species.

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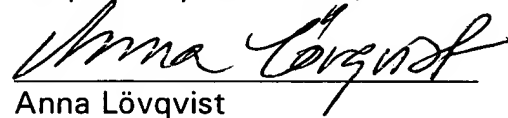
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In view of the above remarks, early and favorable consideration of the pending claims is earnestly requested.

If there are any other issues remaining which the Examiner believes could be resolved through either a Supplemental Response or an Examiner's

Amendment, the Examiner is respectfully requested to contact the undersigned at the telephone number indicated below.

Respectfully submitted,



Anna Löqvist

Limited Recognition Under 37 C.F.R.

§10.9(b) (see attached)

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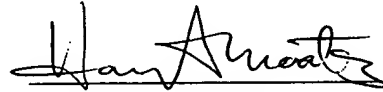
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Expires: February 4, 2004

A handwritten signature in black ink, appearing to read "Harry I. Moatz", is written over a horizontal line.

Harry I. Moatz
Director of Enrollment and Discipline